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June 4, 1997

Federal Communications Commission
Office of Secretary

William F. Caton, Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Dear Mr. Caton:

Enclosed for filing is an original and four copies of the comments of Citizens Communications in RM-9085, CCB/CPD 97-19. Also enclosed is a receipt copy.

Please stamp as received the enclosed receipt copy and return it in the enclosed postage-paid envelope.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "John B. Adams".

John B. Adams
Senior Attorney

CC: Chief, Competitive Pricing Division
ITS, Inc.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

JUN - 4 1997

Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Policies and Rules Pertaining to)	RM-9085
Local Exchange Carrier)	
"Freezes" on Consumer Choices of)	CCB/CPD 97-19
Presubscribed Local Exchange or)	
Interexchange Carriers)	

COMMENTS OF CITIZENS COMMUNICATIONS

Citizens Utilities Company, on behalf of itself and its telecommunications subsidiaries (collectively, Citizens), by its attorney, hereby submits its comments in response to the Commission's public notice (DA 97-942) released May 5, 1997 that established a pleading cycle with respect to the Petition for Rulemaking filed by MCI Telecommunications Corporation (MCI) on March 18, 1997 in RM-9085, CCB/CPD 97-19 (MCI Petition or Petition) and shows as follows:

I. INTRODUCTION

Citizens Utilities Company, through divisions and subsidiaries, provides local telecommunications services, electric distribution, natural gas transmission and distribution, and water and waste water treatment services to more than 1,600,000 customer connections in 20 states. Citizens Utilities Company subsidiary incumbent local exchange carriers (Citizens LECs) provide local exchange services in suburban and rural exchange areas in Arizona, California, Idaho, Montana, Nevada, New Mexico, New York, Oregon, Pennsylvania, Tennessee, Utah and West Virginia. In addition, Citizens Telecommunications Company, another Citizens Utilities Company

subsidiary, provides interexchange services throughout the nation and competitive local exchange services in several states. Finally, another Citizens Utilities Company subsidiary, Electric Lightwave, Inc., provides competitive local exchange and interexchange services in Arizona, California, Idaho, Minnesota, Nevada, Oregon, Washington, and Utah.

Because it provides such a broad variety of services, including both local and interexchange service, Citizens believes that the approach it advocates in these comments represents an appropriate balance between the potentially competing interests and perspectives of LECs and interexchange carriers (IXCs).

II. MCI'S PETITION

In its petition, MCI requests that the Commission promulgate rules to govern the solicitation of PIC freezes by carriers. Essentially, MCI's proposed rules would prohibit the anticompetitive use of PIC freezes; prohibit misleading or deceptive PIC freeze solicitations; prohibit carriers from favoring affiliated carriers through PIC freeze solicitation practices; require carriers to provide to other carriers a list of customers having PIC freezes in effect; and require carriers to cooperate, by certain specified means, in the removal of PIC freezes from their customers' accounts. MCI also proposed a definition of PIC freeze. MCI claims that these rules are necessary because of the PIC freeze practices of certain LECs. Citizens addresses each of these issues in turn.

III. NEED FOR A RULE

Citizens agrees with MCI that a rule is needed to govern the solicitation and use of PIC freezes by carriers. The transition to increased competition and customer choice at the local,

intraLATA toll, and interexchange levels provides a powerful motive for carriers to use PIC freezes in such a way as to secure for themselves some competitive advantage. By making it more difficult to change presubscribed carriers, carriers reduce the likelihood that customers will take all of the necessary steps to effect a PIC change. Thus, a carrier that is able to induce a significant portion of its customer base to implement a PIC freeze, especially in advance of competitive entry by other carriers, will have a significant competitive advantage. The lure of such a competitive advantage may be strong enough to induce some carriers to engage in deceptive or misleading practices in order to obtain the competitive advantage provided by PIC freezes.¹ This is true of any competing carrier, regardless of whether such carrier is affiliated with the LEC serving the customer. Obviously, however, the LEC has incentive to engage in PIC freeze solicitations that favor its affiliated toll carrier.

On the other hand, PIC freezes play an important role in combating slamming, which is a significant problem facing the industry. Although slamming sometimes occurs because of good-faith mistakes, it is often the result of unscrupulous carriers acting in bad faith. One need only look to the significant numbers of informal complaints being filed regarding slamming to see the magnitude of the problem. In many of these complaints, customers allege that a carrier or its marketing agent forged a signature on a letter of agency (LOA) or engaged in some other unscrupulous or unlawful activity to slam them. Predictably, as customers have become aware of the slamming problem and, especially, of the unscrupulous practices of some carriers, they have sought a means to protect themselves. The PIC freeze mechanism provides such protection.

¹ Citizens states no opinion with regard to MCI's description of the alleged conduct of particular carriers.

Customers who are fearful of the increasingly publicized unscrupulous practices, may be susceptible to scare tactics or to other misleading or deceptive PIC freeze solicitations. In such instances, a customer, in seeking to avoid the slamming practices of one carrier, may fall prey to the anticompetitive practices of another. The best remedy to this situation is full disclosure of all information necessary for a customer to make an informed choice regarding the implementation of a PIC freeze. Such information should include complete information about what is a PIC freeze, how it works, and what steps are necessary to change presubscribed carriers after a PIC freeze is in place. With such knowledge, a customer can avoid being slammed, but will still be able to readily change his or her presubscribed carriers if he or she so chooses. Thus, both the goals of protecting consumers from slamming and of promoting competition will be met.

IV. DEFINITION OF PIC FREEZE

MCI defines "PIC freeze" as a "product or service offered by a local exchange carrier to its customers, whereby the LEC promises not to change or modify the customer's service without direct instruction from the customer."² Citizens generally agrees with this definition and MCI's description of the process by which PIC changes are generally obtained and executed.³ Unfortunately, the term "PIC freeze" is somewhat of a misnomer. "PIC" is usually defined as the primary or presubscribed interexchange carrier. As competition develops in telecommunications marketplaces other than the interexchange marketplace, other kinds of services will be subject to competition, slamming, and freezes. Accordingly, it should be made clear that the rule governing freezes applies to all competitive services.⁴ Over time, these will

² Petition at 1.

³ See *id.* at 2.

⁴ It may be more appropriate to refer to these freezes simply as presubscribed carrier freezes.

include interexchange, intraLATA toll, and local service. The text of MCI's proposed rule, which refers to "carriers" is sufficiently broad to cover all of these services.

V. PROPOSED RULES

A. Competitive Neutrality

As an initial matter, Citizens suggests that all rules adopted in this rulemaking should be competitively neutral. Citizens further suggests that the PIC freeze solicitation process should itself be as competitively neutral as possible. The purpose of PIC freezes should be to protect consumers from slamming. They should not be used in any way to gain an undue competitive advantage or to thwart competition. Thus, the Commission should adopt competitively neutral rules that mandate competitively neutral PIC freeze solicitation practices.

Moreover, Citizens believes that full and accurate disclosure of information to consumers will, more than anything else, ensure that competition is fair and that consumers are protected from deceptive or misleading practices. In competitive markets, it is essential that consumers have full and complete information so that they can make fully informed decisions. As we move toward a competitive telecommunications marketplace, consumer access to information will become increasingly critical. Indeed, it is critical to the development of competition.

B. PIC Freeze Solicitations

Citizens agrees in principle with MCI's proposed rules 64.1200(a)-(b)(2).⁵ These proposed rules would prohibit carriers from: 1) using PIC freezes to impede competition or to unreasonably limit consumer choice; 2) using PIC freeze solicitations that are deceptive or

⁵ Petition at 8-9.

misleading; and 3) favoring affiliated carriers in its PIC freeze solicitation practices. These proposals set forth needed overarching principles and should be codified in rules. Citizens believes, however, that more specificity is warranted in order to better guide carriers as to acceptable courses of action, to avoid confusion, to give full effect to MCI's proposals, and, more importantly, to ensure free competition while safeguarding consumers from slamming.

A carrier, especially a LEC, interested in making available to its customers protection from slamming, rather than in gaining an artificial competitive advantage, will be indifferent as to whether its customers have a PIC freeze in place. Thus, such a carrier would tend to engage in a customer education campaign with respect to PIC freezes. It would not engage in a marketing-oriented PIC freeze "solicitation" campaign. It would also "solicit" all of its customers, not just those presubscribed to an affiliated carrier. To the extent that the Commission wants to provide for the protection of consumers while ensuring open and free competition, it should adopt rules that reflect this difference in approach.

Specifically, Citizens proposes that the Commission require that the PIC freeze solicitation document or script fully and clearly state:

- 1) Freezes are offered to customers to prevent unauthorized changes of customers' presubscribed carriers;
- 1) There is no charge for a PIC freeze;
- 2) A separate freeze is required for each service frozen, e.g. interexchange, intraLATA toll, and exchange;
- 3) Freezes remain in effect until removed by the customer;
- 4) What actions by the customer are necessary to initiate and to remove freezes; and

5) All carrier selections that are frozen can not be changed until the customer first removes the freeze, even if the customer takes action sufficient to effect a PIC change in the absence of a freeze, i.e., signs an LOA or completes third party verification.

Further, the PIC freeze solicitation document or script should not include any suggestion of whether the customer should or should not initiate a freeze or which carrier selections should be frozen.

These proposals will ensure that customers are fully informed of what a PIC freeze is, what it does, how it works, and what it takes to change carriers once a freeze has been initiated. Thus, the customer can make a fully informed decision. This will both reduce the ability of carriers to mislead or deceive customers and promote competition.

Solicitations should be made to all customers at one time by mail, such as by billing insert. In the event that a carrier receives an inbound telephonic inquiry from one of its customers, it should have a ready script. To the extent a carrier engages in outbound telemarketing, a similar script should be used. All customers should be telemarketed contemporaneously, if at all.

It is worth noting that California has prohibited the solicitation of PIC freezes by LECs during the transition to intraLATA equal access. Specifically, LECs may not solicit PIC freezes from the date 45 days before implementation to 45 days after implementation. LECs may, however, during this period use a separate mailing to notify customers who already have a PIC freeze that another freeze will be necessary to freeze the presubscribed intraLATA toll carrier.⁶

⁶ Alternative Regulatory Frameworks for Local Exchange Carriers (IntraLATA Presubscription Phase), Decision 97-04-083, California Public Utilities Commission (April 23, 1997).

A similar federal prohibition may be appropriate. This implementation period is an important time for the transition to competition.

C. Lists of Customers Having PIC Freezes

Citizens disagrees with MCI's proposed rule 64.1200(b)(3)⁷ which would require carriers to provide lists of their customers having PIC freezes in place. Citizens further disagrees with MCI's proposal that such lists be furnished by electronic or automated means with daily updates.

The information contained in these proposed PIC freeze customer lists is customer proprietary network information (CPNI) and therefore cannot lawfully be used in the manner MCI proposes. CPNI includes information that relates to the type, technical configuration, destination, and volume of telecommunications services used by the customer that the carrier obtains from the customer solely by virtue of the carrier-customer relationship, and information contained in customer bills. 47 U.S.C. § 222(f)(1)(A)-(B). The Commission has defined CPNI as "all information about customers' network services and customers' use of those services that a [carrier] possesses by virtue of its provision of network services. It includes billing information, usage data, calling patterns, traffic studies, and forwarded-to-numbers, but does not include credit information." Craig O. McCaw, 9 FCC Rcd 5836, 5885 (1994) (citing Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1, 215 (1988), *recon.* 5 FCC Rcd 3084 (1990)).

Unless the law or the customer so directs, carriers may not disclose CPNI to anyone, including other carriers, except for the purpose of providing telecommunications services. 47 U.S.C. § 222(c)-(d). Moreover, carriers are expressly prohibited from using CPNI for marketing purposes. 47 U.S.C. § 222(b). The only exception is for inbound (the customer initiates the call)

⁷ Petition at 9.

telemarketing, and then only with the consent of the customer and only for the duration of the call. 47 U.S.C. § 222(d)(3). Thus, MCI's proposed use of this CPNI for the purpose of outbound telemarketing would violate the Act. Further, a LEC that discloses CPNI for this purpose would also violate the Act.

Citizens LECs do not provide this information to Citizens' long distance affiliate for its use in telemarketing and do not see any reason to provide it to MCI or any other long distance carrier. Just as the Commission has prohibited carriers from using billing name and address (BNA) lists for telemarketing purposes, it should also prohibit carriers from using PIC freeze lists for this purpose. Moreover, the Commission should prohibit LECs from providing PIC freeze lists at all. MCI has presented no justification, nor is one apparent, for the dissemination of such lists other than for telemarketing.

D. Inter-Carrier Cooperation Regarding PIC Changes

While Citizens agrees with MCI's view that carriers should cooperate with each other to give effect to a customer's decision to change presubscribed carriers, it disagrees with some of MCI's specific proposals.

1. Use of PIC Change Verification to Override PIC Freeze

Citizens strongly disagrees that LECs should accept third party verified changes or changes for which a carrier has a signed letter of agency (LOA) even if the customer has a PIC freeze. If third party verification and signed LOA requirements were sufficient to protect consumers from slamming, there would be no need for PIC freezes in the first place. The Commission's rules already require one of these verification methods, or the use of ANI on

inbound calls, before a carrier may submit a PIC change on behalf of a customer. Despite these requirements, slamming continues. Thus, this proposal would simply eviscerate the protection provided by PIC freezes. Indeed, it would have the same effect as banning PIC freezes.

2. Conference Calls

Citizens disagrees that conference calls are an appropriate method for changing PICs where PIC freezes are present. As an initial matter, Citizens disagrees with MCI that the call should be among the new carrier, the old carrier, and the customer. It would be necessary to include the LEC in the call, but does not seem necessary to include the old carrier. If anything, including the old and new carriers in the call could lead to distasteful exchanges in which both carriers attempt to market their services to the customer..

Moreover, the new carrier would first have to verify the customer's PIC change request using one of the three methods in Section 64.1100 of the Commission's rules. Absent that, the LEC would essentially be placed in the role of third party verifier for the IXC. LECs should not be forced to provide verification services for IXCs, and certainly not for free. Moreover, a LEC could not perform this function for its affiliated long distance carrier because it would not be independent. It would be passing strange to require a LEC to provide free third party verification services to all unaffiliated carriers and at the same time forbid it to provide those same services to its affiliates. In sum, conference calling is not a workable method for changing PICs, regardless of whether the PIC is frozen.

Finally, even if these problems could be solved, there would need to be coordination between the States and the Commission. Otherwise, carriers could be placed in an untenable position between conflicting federal and state requirements. For example, in California, an IXC

that has used third party verification for a PIC change will be found to have slammed a customer who complains unless the IXC can also produce a signed LOA.

3. Written Notification

Citizens agrees that written notification directly from the customer to the LEC should be sufficient to remove a PIC freeze. Moreover, written notification directly to the LEC from the customer should be required both to initiate and to remove a PIC freeze.

Permitting oral authorization from the customer to initiate or remove a PIC freeze could lead to significant evidentiary and customer relations problems. For instance, a customer could later dispute that he or she ever asked the LEC for a PIC freeze or for the freeze to be removed. In such instances, the LEC would likely have no way of proving that the request was made. Moreover, unscrupulous LECs would be better able to unilaterally without authorization freeze the PICs of customers who presubscribe to its affiliate's toll services. By requiring written notification directly to the LEC, the Commission will help to ensure that customers' PICs are frozen and unfrozen only upon request.

If oral authorization is permitted, the Commission should establish safeguards, just as it has with respect to the underlying PIC changes. Oral requests regarding PIC freezes should be communicated directly to the LEC by the customer without the presence of a telemarketer, such as would occur in a conference call. Further, the LEC should be required to verify that it is indeed the customer who is making the oral request. Because all such calls would be originated by the customer, ANI could be used for verification purposes. This way, the LEC will at least be able to verify that the call is being made from the telephone number for which the PIC freeze or

unfreeze is sought. The Commission has already adopted this methodology for purposes of PIC changes. It would appear to work equally as well, if not better, in the context of PIC freezes.

4. Processing of PIC Unfreeze Requests

Citizens agrees with MCI that LECs ought to quickly process PIC unfreeze requests. Citizens also believes that LECs should be equally quick to process PIC freeze requests. Further, PIC freeze and unfreeze requests should be processed within the same timeframes regardless of whether the PIC being frozen or unfrozen is affiliated with the LEC.

5. Other Reasonable Methods

Citizens believes that all acceptable methods for removing PIC freezes and changing carriers should be contained in the Commission's rules. A carrier having a new or innovative method could always file a petition to have the method included in the rules. It is unfortunate in this time of deregulation that it is necessary to have detailed rules governing PIC changes and PIC freezes. It appears, however, that for now rules are necessary to promote competition and to

protect consumers from unscrupulous carriers (both IXC's and LEC's) that engage in slamming or other deceptive and misleading practices.

Respectfully Submitted,

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By:



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Its Attorney

June 4, 1997

Certificate of Service

I, John B. Adams, Senior Attorney for Citizens Utilities Company, certify that a copy of the foregoing "COMMENTS OF CITIZENS COMMUNICATIONS" has been served upon the following parties by first class mail this 4th day of June, 1997.



John B. Adams

Mary J. Sisak
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